APPENDIX "A"

CONSTITUTION OF FLORIDA

"Section 8. Each county shall be required to assess and collect annually for the support of the public free schools therein, a tax of not less than three (3) mills, nor more than ten (10) mills on the dollar on all taxable property in the same. (Amendment of 1904, Joint Resolution 2, Acts 1903, making the maximum seven (7) mills, as amended by Joint Resolution 25, Acts 1917, and adopted at general election, 1918)."

"Section 9. In addition to the tax provided for in Section 8 of this article the County School Fund shall consist of the proportion of the interest of the State School Fund and of the one mill State tax apportioned to the county, all capitation taxes collected within the county and all appropriations by the Legislature which shall with all other County School Funds be apportioned and distributed as may be provided by law and shall be disbursed by the County Board of Public Instruction solely for the support and maintenance of public free schools: Provided, that such apportionment and distribution shall be made by general law based upon some declared principle of classification to be determined by the Legislature. (Amended, House Joint Resolution 541, Acts 1925; adopted at general election, 1926)."

"Section 17. The Legislature may provide for special tax school districts to issue bonds for the exclusive use of public free schools within any such special tax school district, whenever a majority of the qualified electors thereof who are freeholders shall vote in favor of the

issuance of such bonds, but no bonds shall be issued hereunder which shall exceed, together with the existing indebtedness of such special tax school district, 20 per cent. of the assessed value of the taxable property of such district according to the last assessment for State and County purposes prior to the issuing of such bonds. * * * (Additional section, Joint Resolution 76, Acts 1911; adopted at general election, 1912. Amended, Senate Joint Resolution 333, Acts 1923; adopted at general election, 1924)."

APPENDIX "B"

CHAPTER 9464—(No. 346)

AN ACT to Authorize the Board of Public Instruction of Hillsborough County, Florida, to procure a Loan of not exceeding Two Hundred Thousand Dollars ($200,000.00) and pay interest thereon at at rate not exceeding seven per cent. (7%) per annum, for the purpose of *enlarging the high school building* belonging to the said Board, located in the City of Tampa, and wherein is maintained the county high school for said Hillsborough County, and for the purpose of furnishing such enlargement of said high school building; to authorize said Board in order to procure said loan, to issue and sell not exceeding Two Hundred Thousand ($200,000.00) in principal amount of interest bearing coupon warrants; to make provision for a sinking fund for the retirement of said warrants and the interest to become due thereon; to regulate the expenditure of the sum derived from the sale of said warrants; and to provide for the validation of said warrants.

APPENDIX "C"

CHAPTER 10,655—(No. 633).

AN ACT to Authorize the Board of Public Instruction of Hernando County, Florida, to Procure a Loan of not Exceeding Seventy-five Thousand Dollars ($75,000.-00) and Pay Interest Thereon at a Rate not Exceeding Six Per Cent. (6%) Per Annum, for the Purpose of Acquiring Land within said County and *Erecting Thereon and Furnishing a High School Building to belong to the said Board,* wherein to Maintain a County High School for said Hernando County; to Authorize said Board, in Order to Procure said Loan, to Issue and Sell not Exceeding Seventy-five Thousand Dollars ($75,000.00) in Principal Amount of Interest Bearing Coupon Bonds; to make Provision for a Sinking Fund for the Retirement of said Bonds and the Interest to Become Due Thereon and to Regulate the Expenditures of the Sum Derived from the sale of Said Bonds.

APPENDIX "D"

CHAPTER 10,366—(No. 344)

AN ACT to Authorize the Board of Public Instruction of Bay County, Florida, to Procure a Loan of not Exceeding One Hundred Thousand Dollars ($100,000.00), and to Pay Interest Thereon at a rate not Exceeding Six Per Cent. (6%) per Annum for the Purpose of *Erecting and Furnishing* a High School Building to Belong to the Said Board, Wherein to Maintain a County High School for Said Bay County; To Authorize Said Board, in order to Procure Said Loan, to Issue and Sell Not Exceeding One Hundred Thousand Dollars ($100,000.00) in Principal Amount of Interest Bearing Coupon Bonds; to Make Provision for a Sinking Fund for the Retirement of said Bonds and the Interest to Become Due Thereon, and to regulate the Expenditure of the Sum Derived from the Sale of Said Bonds.

APPENDIX "E"

IN THE SUPREME COURT OF FLORIDA
JUNE TERM, A. D. 1939

STATE OF FLORIDA, EX REL., L. E. VICKERY,

Appellant,

vs.

D. MOWAT, as Chairman of the Board of Public Instruction of Bay County, Florida, W. R. NICHOLS and D. D. JONES, as Members of said Board of Public Instruction,

Appellees.

BAY COUNTY

TERRELL, C. J.

The Appellant as Relator and holder of bond Number 20, issued by the Board of Public Instruction of Bay County pursuant to Chapter 10366, Acts of 1925, brought this proceeding in mandamus against the said Board of Public Instruction to require it to impose a tax on all the taxable property in Bay County sufficient to pay the principal and interest on said bond and others of the same issue. A motion to quash the alternative writ was granted, final decree was entered, and this writ of error was prosecuted.

In fine, Chapter 10366, authorizes the Board of Public Instruction of Bay County to issue bonds not to exceed $100,000 in amount for the purpose of erecting a central high

school building for the use of the County, the said bonds to run not exceeding thirty years and to be retired serially. A portion of the County school fund raised under Section Eight of Article Twelve of the Constitution of Florida, was appropriated under the act to pay interest on and retire said bonds.

The sole question raised in the Court below and brought here for determination is the power of the legislature to authorize the use of funds raised under Section Eight of Article Twelve of the Constitution to pay interest on and retire the bonds so issued.

It appears that the bonds brought in quesion were issued in June, 1925, and were validated by decree of the Circuit Court, that a County high school building was constructed with the proceeds of said bonds and has for years been in use by the County, that interest was paid on the bonds until 1931, when further payments were restrained by decree of the Circuit Court, that said restraining order was later dissolved but no further payments have been made on principal or interest of the bonds and so far as the record discloses; the school term has not been diminished.

It is contended by appellee that the judgment below should be affirmed because all school funds raised under Section Eight of Article Twelve must be used for the support and maintenance of the public schools of the county and that no part of it can be used for the construction of buildings. This contention is supported by the decisions of this Court. See State vs. Board of Public Instruction of Dade County, 126 Fla. 142, 170 So. 602, where this question is fully covered, and

we pointed out that the Constitution provided a complete scheme for the support of the public schools and for the *construction of school buildings.*

We do not in any sense depart from the law as stated in the last cited case. If the payment of interest and retirement of the bonds brought in question with the funds appropriated tended to disrupt the school term, we might be forced to hold them invalid. The record, however, makes no such showing and for all that may be gathered from it, quite the contrary is the case.

Chapter 10366 does not appropriate all the funds possible to be raised under Section Eight of Article Twelve to pay interest on and retire said bonds. It only appropriates a portion of these funds and it is not shown that the use of the funds appropriated for building purposes materially interfered with the support of the public schools of the County. In fact, it is shown that the schools were continued for six years and the bonds were serviced for a like period and the service on the bonds was cut off because of the injunction previously referred to.

While we do not approve this method of financing the construction of high school buildings, at the same time after bonds are issued and validated and have been in the hands of innocent purchasers for fourteen years and the county has had the use of the building for that time, we must decline to hold them invalid at the instance of the Board of Public Instruction when only a portion of the funds raised under Section Eight of Article Twelve are appropriated to service them and it is not shown that the support of the school was materially affected.

When the support of the public schools of the county is provided for, there can be no objection to using any remaining portion of the funds raised under Section Eight of Article Twelve to construct a countywide high school building. State vs. Board of Public Instruction, 86 Fla. 254, 97 So. 384. A board of public instruction should not be permitted under the guise of a constitutional guaranty to provide a facility like a high school building for the county and then turn around and use the same constitutional guaranty to defeat its obligation to pay for the facility so acquired and being used for public school purposes.

If this can be done, sanctity of contract becomes nothing more than a windy platitude. It extracts the moral element from the law, the property that saves it from becoming effete and putrid. Bereft of its moral philosophy, the fundamental and statutory law of a democracy becomes as bread without salt, as a woman without charm, or a man without honor. The spirit of it has departed and nothing remains but dry bones too inert to rattle.

Having reached this conclusion, it follows that the judgment below must be and is hereby reversed.

Reversed.

WHITFIELD, P. J., AND CHAPMAN, J. J., concur.

BROWN, BUFORD AND THOMAS, J. J., dissent.

APPENDIX "F"

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1940

EN BANC

STATE OF FLORIDA, EX REL., L. E. VICKERY, *Appellant,* vs. D. MOWAT, as Chairman of the Board of Public Instruction of Bay County, Florida, W. R. NICHOLS and D. D. JONES, as Members of said Board of Public Instruction, *Appellees.*	BAY COUNTY

Opinion filed February 9, 1940

An Appeal from the Circuit Court for Bay County, Ira A. Hutchison, Judge, J. M. & H. P. Sapp, for Appellant; Stokes & Douglas and Mabry, Reaves, Carlton & White, for Appellees.

PER CURIAM.

In this cause Mr. Chief Justice TERRELL, Mr. Justice WHITFORD and Mr. Justice CHAPMAN are of the opinion that the decree in this cause should be reversed while Mr. Justice BROWN, Mr. Justice BUFORD and Mr. Justice

THOMAS are of the opinion that the said decree should be affirmed. When the members of the Supreme Court sitting six members in a body and after full consultation, it appears that the members of the Court are permanently and equally divided in opinion as to whether the decree should be affirmed or reversed, and there is no prospect of an immediate change in the personnel of the Court, the decree should be affirmed; therefore it is considered, ordered and decreed under the authority of State ex rel Hampton vs. McClung, 47 Fla. 224, 37 So. R. 51, that the decree of the Circuit Court in this cause be and the same is hereby affirmed.

Affirmed.

TERRELL, C. J., WHITFIELD, BROWN, BUFORD, CHAPMAN AND THOMAS, J. J., concur.

I, GUYTE P. McCORD, Clerk of the Supreme Court of Florida, do hereby certify that the above and foregoing is a true and correct copy of the Alternative Writ of Mandamus including copy of the Bond and Coupon involved and attached as Exhibits thereto; copy of the Order of the Court Below upon the Motion to Quash filed by Respondents; copy of Opinion written by Chief Justice Terrell and copy of Order of Court Affirming the Circuit Court in and for Bay County, Florida in that certain cause recently pending in this Court wherein the State of Florida ex rel L. E. Vickery was Appellant and D. Mowat, as Chairman of the Board of Public Instruction of Bay County, Florida, W. R. Nichols and D. D.

Jones, as Members of said Board of Public Instruction were Appellees as the same appears among the Records and Files in my said Office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the Supreme Court at Tallahassee, Florida, this 20th day of May, A. D. 1940.

GUYTE P. MCCORD,
Clerk Supreme Court of
Florida.

(SUPREME COURT SEAL)

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